

LEGISLATIVE BILL 809

Approved by the Governor March 24, 1986

Introduced by Business & Labor Committee, Barrett, 39,
Chairperson; Vickers, 38; Eret, 32;
Hall, 7; Wesely, 26; Labedz, 5

AN ACT relating to labor; to amend sections 48-808, 48-812, 48-816.02, 48-819.01, 48-822, 48-823, and 48-838, Reissue Revised Statutes of Nebraska, 1943, and sections 48-801 and 48-816, Revised Statutes Supplement, 1985; to name an act; to harmonize provisions; to change a provision relating to the reporting of testimony before the Commission of Industrial Relations; to eliminate an obsolete provision relating to substitution of terms; and to repeal the original sections, and also section 48-839, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 48-801 to 48-838 and section 1 of this act shall be known and may be cited as the Industrial Relations Act.

Sec. 2. That section 48-801, Revised Statutes Supplement, 1985, be amended to read as follows:

48-801. As used in ~~sections 48-801 to 48-823~~ the Industrial Relations Act, unless the context otherwise requires:

(1) Person shall include an individual, partnership, association, corporation, business trust, or any other organized group of persons;

(2) Governmental service shall mean all services performed under employment by the State of Nebraska, any political or governmental subdivision thereof, any municipal corporation, or any public power district or public power and irrigation district;

(3) Public utility shall include any individual, partnership, association, corporation, business trust, or any other organized group of persons, any political or governmental subdivision of the State of Nebraska, any public corporation, or any public power district or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes

transportation for hire, telephone service, telegraph service, electric light, heat and power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof;

(4) Employer shall mean the State of Nebraska or any political or governmental subdivision of the State of Nebraska, except the Nebraska National Guard or state militia. Employer shall also mean any municipal corporation, ~~or any public power district or public power and irrigation district,~~ or ~~it shall also include any public utility,~~ as defined in sections 48-801 to 48-823.

(5) Employee shall include any person employed by any employer, as defined in sections 48-801 to 48-823.

(6) Labor organization shall mean any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(7) Industrial dispute shall include any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or refusal to discuss terms or conditions of employment;

(8) Commission shall mean the Commission of Industrial Relations; and

(9) Supervisor shall mean any employee having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

Sec. 3. That section 48-808, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-808. The commission may also appoint a reporter to ~~take in shorthand report~~ and transcribe in duplicate all testimony given in hearings and trials before the commission; and ~~file one copy of the such testimony among the permanent records of the commission;~~ and certify and transmit the other copy to the Supreme

Court in case the matter shall be appealed to the Supreme Court under the provisions of section 48-812 with the commission. The commission shall certify and transmit one copy to the Supreme Court in all cases in which there is an appeal to the Supreme Court under section 48-812.

Sec. 4. That section 48-812, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-812. Except as modified by the Commission of Industrial Relations commission under the provisions of section 48-809 or the other provisions of sections 48-801 to 48-838 the Industrial Relations Act, proceedings before the commission shall conform to the code of civil procedure applicable to the district courts of the state and appeals from its final orders to the Supreme Court shall be taken in the same manner and time as appeals from the district court to the Supreme Court, except that an order determining a bargaining unit or units shall not be appealable to the Supreme Court until after the results of the election have been certified by the commission. Appeals shall be heard and disposed of in the Supreme Court in the manner provided by law.

Sec. 5. That section 48-816, Revised Statutes Supplement, 1985, be amended to read as follows:

48-816. (1) After a petition has been filed under section 48-811, the clerk shall immediately notify the Commission of Industrial Relations commission, which shall promptly take such preliminary proceedings as may be necessary to insure a prompt hearing and speedy adjudication of the industrial dispute. The commission shall have power and authority upon its own initiative or upon request of a party to the dispute to make such temporary findings and orders as may be necessary to preserve and protect the status of the parties, property, and public interest involved, pending final determination of the issues. In the event of an industrial dispute between an employer and an employee or a labor organization when such employer and employee or labor organization have failed or refused to bargain in good faith concerning the matters in dispute, the commission may order such bargaining to be begun or resumed, as the case may be, and may make any such order or orders as may be appropriate to govern the situation pending such bargaining. The commission shall require good faith bargaining concerning the terms and conditions of employment of its employees by any employer, including school districts covered by the

Nebraska Teachers' Professional Negotiations Act after all provisions of such act have been exhausted without resolution of the dispute involved. The commission may require the parties to an industrial dispute to submit to mediation or factfinding and may appoint mediators or factfinders for this purpose. Such orders for bargaining, mediation, or factfinding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith shall mean the performance of the mutual obligation of the employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(2) Public employers are hereby authorized to recognize employee organizations for the purpose of negotiating collectively in the determination of, and administration of grievances arising under, the terms and conditions of employment of their public employees as provided in ~~this act~~; the Industrial Relations Act and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

(3)(a) Except as provided in subdivision (b) of this subsection, a supervisor shall not be included in a single bargaining unit with any other employee who is not a supervisor.

(b) All firefighters and police officers employed in the fire department or police department of any municipal corporation in a position or classification subordinate to the chief of the department and his or her immediate assistant or assistants holding authority subordinate only to the chief; shall be presumed to have a community of interest and may be included in a single negotiating unit represented by an employee organization for the purposes of ~~this act~~ the Industrial Relations Act. Public employers shall be required to recognize an employee's negotiating unit composed of firefighters and police officers holding positions or classifications subordinate to the chief of the fire department or police department and his or her immediate assistant or assistants holding authority subordinate only to the chief when such negotiating unit is designated or elected by employees in the unit.

(4) When an employee organization has been certified as an exclusive collective-bargaining agent or recognized pursuant to any other provisions of this act the Industrial Relations Act, the appropriate public employer shall be and is hereby authorized to negotiate collectively with such employee organization in the settlement of grievances arising under the terms and conditions of employment of the public employees as provided in this such act, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment, including wages and hours.

(5) Upon receipt by an employer of a request from a labor organization to bargain on behalf of employees, the duty to engage in good faith bargaining shall arise if the labor organization has been certified by the commission or recognized by the employer as the exclusive bargaining representative for the employees in that bargaining unit.

(6) The commission shall have the authority (a) to make studies and analyses of and act as a clearinghouse of information relating to conditions of employment of public employees throughout the state, (b) to request from any government, and such governments are authorized to provide, such assistance, services, and data as will enable it properly to carry out its functions and powers, (c) to conduct studies of problems involved in representation and negotiation, including, but not limited to, those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies, (d) to make available to employee organizations, governments, mediators, factfinding boards and joint study committees established by governments, and employee organizations statistical data relating to wages, benefits, and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations, and (e) to establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators or members of factfinding boards.

(7)(a) Except for those cases arising under section 48-818, the commission shall be required to make findings of facts in all cases in which one of the parties to the dispute requests findings. Such request

shall be specific as to the issues on which the party wishes the commission to make findings of fact.

(b) In cases arising under section 48-818, findings of fact shall not be required of the commission unless both parties to the dispute stipulate to the request and to the specific issues on which findings of fact are to be made.

(c) If findings of fact are requested under subdivision (a) or (b) of this subsection, the commission may require the parties making the request to submit proposed findings of fact to the commission on the issues on which findings of facts are requested.

(d) In cases arising under section 48-818, the commission shall issue a recommended decision and order, which decision and order shall become final within ten days of entry unless either party to the dispute files with the commission a request for a posttrial conference. If such a request is filed, the commission shall hold a posttrial conference within ten days of receipt of such request and shall issue an order within ten days after holding of such posttrial conference which order shall become the final order in the case. The purpose of such posttrial conference shall be to allow the commission to hear from the parties on those portions of the recommended decision and order which is not based upon or which mischaracterizes evidence in the record and to allow the commission to correct any such errors after having heard the matter in a conference setting in which all parties are represented.

Sec. 6. That section 48-816.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-816.02. In any request for temporary relief under Chapter 48 the Industrial Relations Act, the commission Commission of Industrial Relations shall mandatorily hold the initial hearing within ten days from the date of the filing.

Sec. 7. That section 48-819.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-819.01. Whenever it is alleged that a party to an industrial dispute has engaged in an act which is in violation of any of the provisions of sections 48-801 to 48-838 the Industrial Relations Act, or which interferes with, restrains, or coerces employees in the exercise of the rights provided in sections 48-801 to 48-838 such act, the commission shall have the power and authority to make such findings and to enter such temporary or permanent orders as the

commission may find necessary to provide adequate remedies to the injured party or parties, to effectuate the public policy enunciated in section 48-802, and to resolve the dispute.

Sec. 8. That section 48-822, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-822. No provision of the Industrial Relations Act sections 48-801 to 48-823 shall be construed to require an employee to work without his or her consent, or to make illegal the quitting of his or her job or withdrawal from his or her place of employment unless done in concert or by agreement with others.

Sec. 9. That section 48-823, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-823. The Industrial Relations Act provisions of sections 48-801 to 48-823 and all grants of power, authority, and jurisdiction herein made in such act to the commission of Industrial Relations shall be liberally construed to effectuate the public policy enunciated in section 48-802. All incidental powers necessary to carry into effect the Industrial Relations Act provisions of sections 48-801 to 48-823 are hereby granted to and conferred upon the commission herein created.

Sec. 10. That section 48-838, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-838. (1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of employees, and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for employees, except ; PROVIDED, that in no event shall a contract between an employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent employees, nor shall any contract bar for more than three years a petition by employees seeking an election to revoke the authority of an agent to represent them. The commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act sections 48-801 to 48-823 following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one

member of the commission who shall be designated to act in such capacity by the presiding judge of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the employer is located to conduct the election in accordance with the rules and regulations established by the commission. The commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission shall consider established bargaining units and established policies of the employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of employees of less than departmental size shall not be appropriate.

(3) The commission shall not order an election until it has determined that at least thirty per cent of the employees in an appropriate unit have requested in writing that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) The commission shall only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment, except ; ~~PROVIDED~~; that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials, and any employee may choose his or her own representative in any grievance or legal action, and such right of representation shall not preclude any employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement

which may be in effect.

Sec. 11. That original sections 48-808, 48-812, 48-816.02, 48-819.01, 48-822, 48-823, and 48-838, Reissue Revised Statutes of Nebraska, 1943, and sections 48-801 and 48-816, Revised Statutes Supplement, 1985, and also section 48-839, Reissue Revised Statutes of Nebraska, 1943, are repealed.